

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

**Clerk's Minutes**

**Before the Honorable Judith C. Herrera**

**CASE NO.** CV 17-752 JH/SMV                      **DATE:** October 16, 2017

**TITLE:** *Pearce, et al. v. Balderas, Jr., et al.*

**COURTROOM CLERK:** V. Loman                      **COURT REPORTER:** P.Baca

**COURT IN SESSION:**

9:33 a.m.

1:43 p.m.

**COURT IN RECESS:**

12:17 p.m.

5:03 p.m.

**TOTAL COURT TIME:** 5 hours + 4 minutes

**TYPE OF PROCEEDING:** Hearing on Preliminary Injunction held

**COURT'S RULINGS/DISPOSITION:**

Court **DENIED** Plaintiffs' Emergency Motion to Exclude the Testimony of Senator Dede Feldman at Plaintiffs' Motion for Preliminary Injunction Hearing (**ECF No. 41**).

**ORDER CONSISTENT WITH COURT'S RULING TO BE PREPARED BY:**

The Court

**ATTORNEYS PRESENT FOR PLAINTIFF(S):**    **ATTORNEYS PRESENT FOR DEFENDANT(S):**

Carter Harrison IV

Matthew R. Hoyt

Rebecca Branch

Timothy Williams

Sean Cunniff

Nicholas Sydow

**PROCEEDINGS:**

9:33 A.M.            Court in Session. Court calls case.

9:33 A.M.            Counsel enter appearances.

9:36 a.m.            Court addresses time constraints in taking up Def. Balderas's motion to dismiss as first order of business. Ms. Branch states she does not have much to add beyond what

is contained in the briefs. The Court decides to turn first to Plaintiffs' motion for preliminary injunction.

9:37 a.m. Mr. Hoyt asks Court to address Plaintiffs' Emergency Motion to Exclude the Testimony of Senator Dede Feldman at Plaintiffs' Motion for Preliminary Injunction Hearing (ECF No. 41). The Court states that it has fully reviewed the motion and briefs and has a few questions for Defendants. Mr. Harrison says that he has no further argument to add to their motion. The Court asks Defendants how the relevance of the proposed testimony. Mr. Sydow presents his argument. The Court asks for a brief proffer of testimony. Mr. Sydow offers a proffer. Mr. Harrison responds. Mr. Sydow replies.

9:48 a.m. **The Court denies the motion to exclude and provides its reasons.**

9:51 a.m. Mr. Sydow proposes making brief opening statements and stipulating to exhibits to speed up process. The Court asks about objections to exhibits. Mr. Hoyt says that he has not had an opportunity to confer. Mr. Hoyt expresses concern on Def.'s Ex. 5-12, a series of newspaper articles, and argues under Rule 401 the exhibits are not helpful to the relevant inquiry. The Court asks the parties to confer to determine whether they can stipulate to exhibits.

9:56 a.m. Break for parties to confer.

10:01 a.m. Court resumes. Mr. Hoyt states that parties agreed to limit Def.'s Exhibits 5-12 to three articles. The parties state they have no other objections to exhibits.

10:02 a.m. Mr. Hoyt begins his opening argument.

10:13 a.m. Mr. Sydow begins his opening argument.

10:20 a.m. Ms. Branch begins her opening argument.

10:22 a.m. Mr. Williams begins his opening argument.

10:23 a.m. Mr. Sydow asks the Court to invoke the Rule to sequester witnesses. Mr. Hoyt objects. Parties present their argument on the issue. The Court invites witnesses to remain outside the courtroom before they testify, but will not enforce the Rule because the parties have agreed that the rules of evidence do not apply to the proceeding.

10:27 a.m. Plaintiffs call Andrea Todd-Goff as their first witness. Ms. Todd-Goff is sworn. Mr. Hoyt begins his direct examination.

10:34 a.m. Mr. Hoyt asks Ms. Goff about Plaintiff's Ex. A.

10:40 A.M. Mr. Hoyt asks about Plaintiff's Ex. B.

10:45 a.m. Mr. Hoyt asks about how to find FEC reports and Ms. Goff explains how to obtain the reports via the FEC website.

10:49 a.m. Mr. Hoyt asks about Pl.'s Ex. C, Ex. D, Ex. E and Ex. G.

10:58 a.m. Mr. Hoyt questions Ms. Goff about Pl.'s Ex. F.

11:02 a.m. Mr. Hoyts asks Ms. Goff about Pl.'s Ex. H, Ex. I, Ex. J.

11:13 a.m. Mr. Hoyt finishes direct examination. Court takes recess.

11:31 a.m. Back in session. Court permits defense counsel to call witness out of order. Mr. Sydow calls former State Senator Dede Feldman. Ms. Feldman sworn. Mr. Sydow begins his direct examination.

11:40 a.m. Mr. Sydow asks Sen. Feldman about Def.'s Ex. 11, 12, and 13. Mr. Sydow asks Court to take judicial notice of what public was considering at time. Mr. Hoyt objects based on relevance. The Court admits Def.'s Ex. 11, 12, and 13 and will give it the weight the Court deems appropriate.

11:44 a.m. Mr. Sydow asks Ms. Feldman about Def.'s Ex. 11, Ex. 12, and Ex. 13.

11:46 a.m. Mr. Sydow finishes direct examination. Neither Ms. Branch nor Mr. Williams have any questions. Mr. Hoyt begins cross examination of State Senator Feldman.

12:03 p.m. Mr. Hoyt asks Sen. Feldman about Def.'s Ex. 11, 12, 13, Pl.'s Ex. K.

12:09 p.m. Mr. Hoyt resumes questioning Sen. Feldman and asks about Pl.'s Ex. I.

12:15 p.m. Mr. Hoyt ends cross examination. Mr. Sydow begins redirect examination.

12:16 p.m. Senator Feldman excused. Court asks regarding time for remaining witnesses. Parties state positions.

12:17 p.m. Court in recess.

1:43 p.m. Court back in session. Ms. Goff returns to witness stand. Mr. Cunniff begins his cross examination. Mr. Cunniff asks Ms. Goff questions about Pl.'s Ex. H, Ex. I, Ex. J, Ex. K

1:56 p.m. Mr. Cunniff asks Ms. Goff additional questions.

2:06 p.m. Mr. Cunniff questions Ms. Goff about Ex. A, Def.'s Ex. 1-7.

2:30 p.m. Mr. Cunniff asks about Pl.'s Ex. B, Def.'s Ex. 10, Pl.'s Ex. A.

2:52 p.m. Mr. Cunniff ends cross examination. Ms. Branch begins cross examination of Ms. Goff.

2:54 p.m. Mr. Williams begins cross examination of Ms. Goff.

2:58 p.m. Mr. Hoyt begins redirect examination.

2:59 p.m. Ms. Goff excused.

3:00 p.m. Recess.

3:16 p.m. Mr. Hoyt calls Paul Smith. Mr. Smith sworn. Mr. Hoyt begins direct examination.

3:30 p.m. Mr. Cunniff begins his cross examination. Mr. Cunniff asks Mr. Smith about Def.'s Ex. 10.

3:41 p.m. Ms. Branch begins cross examination.

3:43 p.m. Mr. Williams begins cross examination.

3:45 p.m. Mr. Smith excused.

3:46 p.m. Mr. Hoyt moves admission of Pl.'s Ex. A-K; withdraw Ex. L. No objection.  
Court admits Ex. A-K.

3:46 p.m. Mr. Cundiff calls Mandy Vigil. Ms. Vigil sworn. Mr. Cundiff begins direct examination of Ms. Vigil.

3:56 p.m. Ms. Branch has no questions. Mr. Williams begins direct examination.

3:57 p.m. Mr. Hoyt begins cross examination.

4:01 p.m. Mr. Hoyt asks Ms. Vigil about Pl.'s Ex. C and Ex. I.

4:11 p.m. Mr. Cunniff begins his redirect examination of Ms. Vigil.

4:13 p.m. Ms. Vigil excused. Def. Secretary of State has no additional witnesses but moves to admit Def.'s Ex. 1-13. Court admits Def.'s Ex. 1-13. Ms. Branch and Mr. Williams have nothing further. Mr. Hoyt has no further evidence.

4:15 p.m. Mr. Hoyt begins closing argument.

4:23 p.m. Mr. Sydow begins closing argument.

4:53 p.m. Ms. Branch begins closing argument.

4:58 p.m. Mr. Williams begins closing argument.

4:59 p.m. Mr. Hoyt begins rebuttal argument.

5:01 p.m. Mr. Hoyt's argument ends. Court states that it may rule on motions to dismiss on the pleadings and will take under advisement all pending motions. Mr. Sydow states Def. Secretary of State's motion to dismiss does not require a hearing. Ms. Branch states that the briefing is sufficient to rule on Def. Balderas' motion to dismiss.

5:03 p.m. Court in recess.